Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for	)	
Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier	)	
Compensation Regime	)	CC Docket No. 01-92
	)	

REPLY COMMENTS OF GVNW CONSULTING, INC.

Jeffry H. Smith
Vice-President and Division Manager – Western Region
Chairman of the Board of Directors
GVNW Consulting, Inc.
8050 SW Warm Springs Street, Suite 200
Tualatin, Oregon 97062

Kenneth T. Burchett
Master Consultant

Robert C. Schoonmaker
President and CEO

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EXECUTIVE SUMMARY

The short term proposals offered by the Commission would result in drastic changes to current USF rules that would significantly impact the support payments that rural wireline carriers receive.

We encourage the Commission to consider the public policy benefits of the RLEC proposal offered in the April 18 comment filing. The RLEC proposal shifts the focus of future support mechanisms to broadband via an approach that starts with an adjusted amount of today's interstate allocated network costs, and then adds support calculations for the critical "middle mile" facilities and necessary access to the Internet backbone. Carriers would be eligible to receive support for broadband transmission costs after subtracting a benchmark cost amount. The RLEC CAF support amounts would increase as broadband adoption increases. We are optimistic that the rule language which must be drafted to make operational the filed RLEC plan will create the proper incentives and path for long-term reform.

We concur with the Commission's stated intent at paragraph 12 of the Notice to avoid sudden changes or implement flash cuts in its USF and ICC policies. If careful deliberation is not undertaken, the end result will eventually lead to a degradation of service if rural carriers are unable to recover the cost of maintaining their networks. As carriers of last resort, networks are constructed, not incremental lines.

The proposed change in the rules appears to be a change in policy from directing money to the highest cost to serve customers to customers that are a lower cost to serve in companies that just cross the threshold of being eligible for support, and the cost recovery mechanisms have to account for the fixed costs of the entire network needed to provide service in rural areas.

We respectfully disagree with the Commission's view regarding corporate expense. A rigorous application of common sense and the evidence one can find in the comments filed in this proceeding clearly indicate that certain corporate expenses are incurred in providing Universal Service. The RLEC proposal recognizes a minimal level for USF while limiting the total amount that will be included in the computation for each of the three major high cost support mechanisms.

The Commission must be cautious to recognize the interdependence that wireless carriers have on wireline networks. The mobility provider depends on the wireline provider in its call completion architecture. Current wireless, VoIP, and satellite networks require a connection to land line infrastructure to provide full functionality.

A significant portion of a rural wireline carrier's network cost recovery has been based on intercarrier compensation (ICC). A foundational cornerstone of any reform strategy must include the ability for rural wireline carriers to recover the investments already deployed while maintaining a comparable rate structure as required in Section 254 of the Telecommunications Act of 1996.

If the Commission, in partnership with state regulators, were to proceed with any such reductions in intrastate access charges, there must also be created a mechanism that will afford rural wireline carriers the opportunity to replace the lost revenue from the rate equalization. Without this type of revenue offset, rural carriers would be unable to continue the transition to a more ubiquitous broadband network in the highest cost to serve areas of the country, and customers of these carriers face the potential for very significant increases to local rates or SLCs that would not meet the comparable rate standard found in Section 254.

The proposal in the instant Notice suggests that a mandatory disaggregation plan is now appropriate. While most consultants and attorneys might well welcome the positive incremental impact on firm revenue from conducting a complex study for each and every client they presently serve, we question the efficacy of the Commission proposal for several reasons.

The results are striking – the price cap carriers have had the resources to deploy infrastructure investment to their rural operating territory. Simply stated, the price cap companies made a choice not to invest in less populated areas in order to improve their operating results. It would be prudent for the Commission to very carefully approach the rural-rural divide issue and not issue blank checks to large national carriers that have a well-established track record of not deploying rural investment.

Absent Congressional action changing the law, the Commission must adopt rules that meet all legal requirements as opposed to the desire of former staffers that drafted the National Broadband Plan.

Introduction and Background

In the instant Notice of Proposed Rulemaking (NPRM), the Commission seeks comment on short-term and long-term reforms to USF and ICC. GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America. We are pleased to have the opportunity to offer reply comments addressing the issues the Commission has raised in this important Notice.

We concur with the statements offered in the November 22, 2010 letter from United States Senator Daniel K. Inouye to FCC Chairman Genachowski: "*I recognize that the FCC has begun the long-term process of comprehensive universal service fund reform. I also understand that the National Broadband Plan proposes to reform the high-cost fund. However, the purpose of my letter is . . . to underscore the fact that a 'one size fits all' approach to universal service fund reform is unrealistic. . .*"

We agree with the Telecommunications Association of Maine (TAM) that the principle of "first, do no harm" is applicable in this Commission reform effort.
In this regard, the Commission must be cautious to recognize the interdependence that wireless carriers have on wireline networks. The mobility provider depends on the wireline provider in its call completion architecture. Current wireless, VoIP, and satellite networks require a connection to land line infrastructure to provide full functionality. This network reality is documented in *Wireless Needs Wires: The Vital Role of Rural Networks in Completing the Call*, published by the Foundation for Rural Service in March, 2006. This paper states in part:

> *Without thoughtful consideration by policymakers of the challenges of providing wireless services in rural America, as well as the dependence of wireless services on wireline networks, portions of the nation are likely to remain underserved . . .Most importantly, one must recognize that without the underlying wireline network, wireless networks could not exist in their current form. In spite of this obvious fact, large wireless carriers and policymakers alike continue to pursue practices and policies that will in fact undermine the critical wireline network. While discussions on how to modify reciprocal compensation, access charges, and universal service continue, attention must be placed on ensuring these mechanisms are capable of maintaining the fiscal health of that wireline network.*

Some of the proposals offered by the Commission in this Notice threaten to harm decades of progress to serving communications needs in rural America. Our reply comments are focused to this potential harm.

NEAR-TERM REFORMS REQUIRE AN ADEQUATE TRANSITION

We concur with the Commission's stated intent at paragraph 12 of the Notice to avoid sudden changes or implement flash cuts in its USF and ICC policies. If careful deliberation is not undertaken, the end result will eventually lead to a degradation of service if rural carriers are unable to recover[1] the cost of maintaining their networks.

[1] Sacred Wind Communications, Inc. observed that the NPRM seems to direct the industry toward higher regulatory costs and less financial support.

A wide cross-section of commenters focused on the importance of an orderly transition. As noted at page 2 in the comments of the United States Telecom Association, it is not financially viable for providers in some areas of the country to build facilities without universal service support. Accordingly, this reform cannot be done overnight and it should not be done by placing unfunded mandates for broadband build-out on carriers.

Allband Communications Cooperative offered a concept at page 21 of its filing that merits further review: grandfathering of existing[2] entity legacy investment: "*A retroactive application of the Commission rules would be unlawful, unreasonable, arbitrary, irrational, and quite frankly, unnecessary and counterproductive.*"

The American Cable Association (ACA) recommends at pages 34-35 that telephone companies serving fewer than 100,000 lines nationwide should be provided[3] an eight year transition period.

The California Public Utilities Commission suggests a ten-year time frame migration *"seems prudent to bring about the USF and ICC reforms the FCC seeks*."

Level 3 Communications recommends at page 6 that the Commission adopt a nine-year transition plan.

[2] TDS Telecom notes at page 4 that the NPRM mischaracterizes rate of return regulation and underestimates its ability to serve universal broadband goals, since ROR carriers meet the "*needs of the otherwise unserved public.*"

[3] We disagree with the ACA assertion that at the end of the eight year period that high-cost funding should sunset.

NEAR-TERM REFORM PROPOSALS WOULD HAVE A DRASTIC IMPACT ON RURAL CARRIER VIABILITY

The data submitted by GVNW Consulting and other cost consulting firms show that the Commission's short-term proposals will result in rural carriers earning negative rates of return and TIER ratios dropping to levels that show clearly that the rural carriers would be unable to pay back the debt[4] that has been incurred to build the networks that serve[5] rural customers. As stated by the Alaska Telephone Association at page 2 of its filing:

"*We wondered at federal policy where one agency forcefully advocates for the protection of Alaska's wolves, polar bears and beluga whales, while another contrives to devastate the environment necessary to nurture the connectivity lifeline to Alaska's people."*

<u>Appropriate level of Corporate Expenses to include in HCL, LSS and ICLS</u>

We respectfully disagree with the Commission's view regarding corporate expense as stated in paragraph 197 that these expenses are discretionary. While we believe there is some discretionary spending involved, we think it impossible that a company could provide telecommunications services under current regulation without incurring costs[6] associated with accounting, management, insurance, legal, and regulatory compliance.

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[4] See, for example, Pine Telephone System comments: "*FCC's plan to freeze and eliminate many of the existing support mechanisms without a clear path for how existing investment is to be recouped violates Section 254(b)(5) – it is not specific, it is not predictable, and it is not sufficient*."

[5] As noted by Public Knowledge and the Benton Foundation, the FCC proposal threatens to sacrifice universality on the altar of fiscal control.

[6] Basic corporate operations functions that must occur in a going concern include salaries of general manager and support staff; board of directors costs; financial and regulatory accounting functions; annual audit requirements; cost separations studies; maintaining relations with government and regulators, including preparing and presenting information to FCC and state PUC, including CALEA and CPNI compliance; national and state association dues that create efficiencies for small carriers; information management tasks and necessary legal costs.

GVNW believes the RLEC proposal provides a better balance to the treatment of corporate operations expenses in federal universal service support mechanisms than the draconian proposals floated by the Commission:

- A rigorous application of common sense and the evidence one can find in the comments filed in this proceeding clearly indicate that certain corporate expenses are incurred in providing Universal Service. The RLEC proposal recognizes a minimal level for USF while limiting the total amount that will be included in the computation for each of the three major high cost support mechanisms.

- While we favor the RLEC proposal, we encourage the Commission to use informed judgment in balancing the amount of Corporate Expense that is recovered through the support mechanisms versus the amount recovered through intercarrier compensation or direct charges to the end users.

- We also request that the Commission update the initial threshold for the corporate allowance for small rate of return companies. While the per-line amount has grown since the inception of the limitation based on the prescribed index, the base amount for the smallest companies has not changed. In light of inflation, and the increased regulatory costs associated with USF and the anticipated increase in cost associated with implementing more accountability into the universal service system, we believe the initial threshold amount needs to be increased.

We hope the Commission has not made this proposal to eliminate corporate expense from the support mechanisms as a result of a misguided belief that all corporate expenses are discretionary. The North Dakota PSC stated at page 4 that it believes that the proposed elimination of all corporate operations expenses would result in higher rates and poor customer service.

As CoBank noted in their comments, building and maintaining networks to provide broadband in rural areas is a capital-intensive endeavor. CoBank stated at page 8 that it would immediately be able to increase RLEC's access to capital by 30% - 40% if the CAF is structured in a similar fashion to the current USF model with a broadband focus.

The Indiana Utility Regulatory Commission (IURC) states at page 2 that it is concerned that Commission proposals threaten and perhaps violate the rural/urban parity as required in Section 254(b)(3).

KEY POLICY CRITERIA ARE MOST CLOSELY MET BY THE RLEC LONG-TERM CAF PROPOSAL, WHILE SOME PROPOSALS ARE NOT BASED ON A SOLID POLICY FOUNDATION

Indicative of the deceptive rhetoric found in the comment round is the statement by Free Press at page 6 that the Commission must focus on reducing consumer burden, not on revenue replacements or other **regulatory gifts** to incumbent carriers (emphasis added). Rural carriers receive the HCL mechanism to recover costs already incurred based on money spent two years earlier on loop costs. That hardly qualifies as a gift under any definition of that term.

<u>There are four key criteria to consider for long-term reform</u>

In our comments, we offered some public policy criteria for use in evaluating the NPRM proposals, the RLEC plan, and other submissions to the record in this docket:

1) *Does the plan comply with federal law?*
2) *Does the plan incent the transition to broadband without damaging one set of rural customers in favor of other rural customers?*
3) *Does the plan provide for the recognition that voice is not yet merely an application, and COLR obligations are still relevant?*
4) *Does the plan result in comparable rates for rural customers compared to urban customers without excessive SLC increases?*

We evaluate the comments filed based on each of the four public policy criteria.

We encourage the Commission to consider the public policy benefits of the RLEC proposal offered in the April 18 comment filing. The RLEC proposal shifts the focus of future support mechanisms to broadband via an approach that starts with an adjusted amount of today's interstate allocated network costs, and then adds support calculations for the critical "middle mile" facilities and necessary access to the Internet backbone. Carriers would be eligible to receive support for broadband transmission costs after subtracting a benchmark cost amount. The RLEC CAF support amounts would increase as broadband adoption increases. We are optimistic that the rule language which must be drafted to make operational the filed RLEC plan will create the proper incentives and path for long-term reform. GVNW supports Step One of the RLEC plan and believe all four of the action steps are necessary for effective reform of the ICC rules.

Compliance with federal law

Section 254 of the Telecommunications Act of 1996 requires that federal universal support be specific, predictable and sufficient. Many of the short-term proposals offered by the Commission do not provide predictable and specific federal universal support that is sufficient to meet the federal law requirement of universal service. We respectfully remind the Commission that federal law with respect to universal service has not changed since the Telecommunications Act of 1996.

While GVNW is supportive of Step Two of the RLEC plan, we have concerns about the perceived change in Commission policy regarding USF, and we have concerns about the potential rules that will implement this step.

- Rate of Return ILEC's generally perceive the current USF goal as a desire to provide service to all people in their serving area in the most cost effective way.
- The perception of the Commission's change in policy is that some customers are too costly to serve, and thus USF support should not be provided to the highest cost customers.

The National Association of Regulatory Utility Commissioners (NARUC) offers several specific concerns with respect to complying with federal law. For example, NARUC asserts at page 6 that Section 706 rules do not justify bypassing the tenets of Section 254 and Section 214(e) requirements. NARUC further asserts at page 6 that the Commission lacks authority[7] to unify ICC regimes, and that the Commission cannot forbear from Section 254 and Section 214(e) requirements. The North Dakota Public Service Commission submits at page 3 that carriers should not be jeopardized by retroactive application of cost recovery changes. This thought was echoed by the Public Utilities Commission of Ohio in their comment at pages 11-12 that it would not be in the public interest to eliminate USF support for carriers that have relied on this support to obtain loans to build infrastructure and fulfill their carrier of last resort obligations.

Adopting proposals by groups such as the Ad Hoc Telecommunications Users Committee that recommend at pages iii and 49 that reform should not be "revenue neutral" to wireline carriers of last resort would violate key provisions of Section 254 of the Telecommunications Act of 1996. The Regulatory Commission of Alaska filed comments at page 3 stating that the proposed transition to the Connect America Fund will not result in a support level that is adequate to support Alaska's high-cost-to-serve areas.

Absent Congressional action changing the law, the Commission must adopt rules that meet all legal requirements as opposed to the desire of former staffers that drafted the National Broadband Plan.

[7] At page 7, NARUC poses the question: "*Did Congress actually intend for the FCC to be able to selectively reallocate continuing federal-State jurisdictional responsibilities* . . .? NARUC answered its own question by stating: "*The answer is obvious. Congress clearly did not*."

The NPRM proposes several changes to the jurisdictional separations rules codified in Part 36. It is not clear when these proposed changes will be referred to the Separations Joint Board. Is it the Commission's intent to refer the applicable issues to a Separations Joint Board and receive its recommendation before adopting changes to the separations rules as proposed in the NPRM, or to do so after the comments and reply comments submitted in this proceeding? We noted with interest the comments at page 32 of the RLEC filing: "*The RLEC Plan calls for the Commission (in cooperation with a Federal-State Joint Board convened under section 410(c) of the Act) to revise its separations rules so as to allocate additional "last-mile" Category 1.3 and COE 4.13 loop costs to the interstate jurisdiction for individual RLECs. . .*"

Section 410(c) of the Communication Act of 1934, as amended by The Telecommunications Act of 1996, requires the referral of any proceeding regarding the jurisdictional separation of common carrier costs to a Joint Board consisting of three Federal Commissioners and four State Commissioners. It is our understanding that the Universal Service Joint Board membership is not confined to the three Federal and four State Commissioners. While the Universal Service Joint Board appropriately makes recommendations regarding the Part 54 Universal Service rules, it would appear that the Separations Joint Board would need to make the recommendations regarding proposed changes to the Part 36 rules to comport with legal requirements.

Incent the transition without damaging rural wireline customers

We recognize that the Commission faces a significant challenge with respect to determining how best to allocate federal universal service support funding during the transition to broadband. GVNW believes the proposed limitation on capital expenditures will help define which customers the Commission chooses to exclude from receiving the benefits of Universal Service. We request that the Commission carefully consider the following in addressing any limitations on capital expenditures:

- In evaluating past capital recovery, there should be a reconciliation of economic life with service life of the assets. For example, a company may engineer facilities for a 5 year life while the service life of the asset could be 20 years or more. In this situation, the company will be redeploying the assets every five years to meet the capacity needs, and thus if a 20 year service life is used for capital recovery, the use of book depreciation reserves in determining appropriate construction budgets may produce poor results.

- Decisions by the Commission such as the one that disallowed certain of the investments deployed by Sandwich Isles Communications fuels concern for carriers that need to deploy long-lived assets in the highest cost to serve territories. We request that the Commission carefully consider the long-term implications of depriving the highest cost to serve customers of the needed broadband service, if the goal is to truly develop a NATIONAL broadband plan. We believe this concern is shared by the Rural Broadband Alliance with its Transitional Stability Plan (TSP). It is our understanding that the TSP will allow an upward adjustment to the frozen interstate revenue requirement based on a showing of need. We are assuming the showing will be based on the jurisdictional separations rules that are in place for the annual period for which the adjustment is requested. In light of this, it seems prudent for the jurisdictional separations rules to reflect the relative transition of services from state to interstate. At this point we do not know if the separations rules will keep pace with transitions in the industry. Further, while it is noted that the TSP can work either within a NECA pooling arrangement, or outside a pooling arrangement, it is not clear how the pooling may effect the "used and useful" determination within the TSP. Will this result in NECA taking measures to prevent certain companies' costs being filed with the tariff, or will it result in certain companies costs being highlighted in the filing with the potential affect of suspending the tariff filing for all pool participants?

- If a waiver process is put in place to allow expenditures beyond the pre-established cap, we request that the Commission make this process administratively feasible for the rural rate of return companies to use. Current waiver processes generally take much longer than would be needed for an effective capital expenditure approval mechanism.

Several proposals would damage the ability of rural carriers to meet current operating requirements. In an ex parte filed April 21, 2011, Parrino Strategic Consulting Group offered as the final bullet on the last page of the ex parte attachment the following statement in regards to the preliminary results of a regression analysis regarding operating expenses: "*Preliminary results indicate that we can predict Op[e]X and Cap[e]X consistently for rate-of-return companies*."

While several of the statements[8] prior to this last assertion track to the previous work of the Rural Task Force, it appears that the Parrino work is not yet complete. For example, at page 3 of the attachment to the April 21 Parrino ex parte, a footnote states that "not all companies submitted complete data for all of the items." At page 5, the attachment notes that "*depreciation and taxes were excluded from operating expenses for the purposes of our analysis.*"

We believe it is not prudent to extrapolate from an incomplete data set, and premature to assert that accurate prediction of rural carriers operating expenses is achievable. While we encourage the group to continue their analytical work, it does not appear the analysis is complete. In other words, Parrino, et al believes that it is possible to create a proxy model that will replace individual, actual company costs, but the reality is that until that analysis is complete it is premature to assume consistency or accuracy.

[8] At slide 11, initial finding that linear density is the most important predictor of construction cost is consistent with findings of the Rural Task Force.

The Rural Task Force (RTF) that has previously researched this topic in great detail rejected the assertion that a proxy model can be used to develop costs in rural areas due to the level of variation in costs by area and size of the company. We believe that the RTF conclusions still remain relevant. The Commission has previously endorsed the findings of the RTF.

The ITTA at pages 8-9 of its comments opined that: "*The notion that the federal government should adopt rules that would deliberately undercompensate carriers for current operations in the hope that it would force investment in new technologies would be a level of top-down regulation that the Commission has rejected in the past.*"

Voice must be viable during the transition, and COLR obligations are still relevant

While we are in a transition to a paradigm where voice service will evolve to being an application on the broadband suite of services, we are not there yet. Accordingly, the functions that must be performed by rural wireline carriers as carriers of last resort cannot be ignored or cast aside. One of the most important ramifications of this fact is that rural carriers construct networks to serve an entire area; they do not build lines one by one. Thus, any short-term modifications to federal universal service support must continue to provide sufficient and predicable support while carriers of last resort obligations are enforced.

To isolate this cost and allow no opportunity for recovery would undoubtedly result in confiscation[9] claims.

[9] We also believe that if the Commission decides to impose limitations on the recovery of existing investment, such an approach would be unreasonable as it would apply retroactive ratemaking that companies could not have anticipated prior to committing company funds and incurring obligations with lenders. We respectfully recommend that the Commission take a more forward-focused approach in order to avoid the lengthy and contentious confiscation cases that would certainly result from such an Order.

Comparable rates means no excessive increases to local rates or SLCs

As demonstrated in the data included in the comment filings, certain of the Commission's proposals could have the effect of creating the need for excessive increases to local rates or SLC levels.

The North Dakota Public Service Commission (NDPSC) is on target with their observation at page 3 in their filing that caps, constraints and benchmarks must recognize the inherent cost differences between serving densely and sparsely populated areas, and should only be implemented on a going-forward basis.

TRIBAL BROADBAND ISSUES REQUIRE SPECIAL CONSIDERATION

As the Commission has recognized in multiple proceedings[10], the challenge to expand broadband to tribal territory will require special efforts.

Several parties representing tribal interests have offered insightful comments in the opening round of filings on April 18. For example, in the filing made by the Native Telecom Coalition for Broadband (NTCB), the group states at page 2 "*that there are unique circumstances justifying not just an exception from the cap, but demanding a more complete resolution of universal service funding for Native Americans. A 'hundred years' of geographic isolation on Tribal lands[11] and related income disparity are real barriers prohibiting Native Americans from experiencing quality of life enhancements*

[10] In addition to the tribal questions posed in this instant Notice, the Commission has initiated a separate Notice of Inquiry in CG Docket No. 11-41 [FCC 11-30] to further examine tribal deployment issues.
[11] As NTCB notes at page 5 of its comments: "*It is readily apparent that Native communities tend to be geographically remote. In Alaska and Hawaii, extreme separation from the lower 48 amplifies the cost factors and build-out times to reach unserved and underserved Native developments/villages. Where tribal lands are or were once served by larger ILECs, there is generally a history of neglect and minimal infrastructure deployment because initial and ongoing costs are very high to reach these areas far removed from urban/suburban networks.*"

and economic opportunities that have become available to most Americans through advanced communications technology." The NTCB recommends the Commission create a new universal service program with a separate Native Broadband Fund, applicable to Indian Country, Alaska Native Regions, and the Hawaiian Home Lands.

The National Tribal Telecommunications Association (NTTA) believes that tribal and native communities should be exempted from reverse auctions, due to their observation beginning on page 9 that reverse auctions would create greater USF costs, trigger catastrophic results for small businesses, create investment insecurity, stifle infrastructure investment, and reverse gains in rural markets.

In its filing, GCI states at page 37 that in the state of Alaska, limiting CAF support to rural ILECs through a right of first refusal would undermine 21st Century broadband deployment and harm public safety. Wrapping itself in the cloak of public safety, GCI's primary objective is to favor its wireless network over other networks in rural Alaska and become the sole recipient of federal universal service in the rural Alaska. The rural ILEC's landline networks in Alaska would cease to be viable without support, and GCI's attempts to set the stage to become the monopoly carrier and sole recipient of federal USF in the state of Alaska should be soundly rejected. This is a self-serving[12] proposal, and one that is not based on a sound public policy foundation.

[12] We note from page 58 of GCI's 2010 10K that was filed with the SEC, during the year ended December 31, 2010, GCI repurchased 8.0 million shares of GCI common stock at a cost of $80.8 million and these shares were retired. Given that GCI's annualized high cost support for Alaska per USAC's third quarter 2011 FCC filings is over $55 million, perhaps rather than making GCI the sole recipient of high cost support in Alaska, the FCC should consider GVNW's comments that wireless carriers should be required to report their actual costs for determining eligibility of high cost support.

There are several parties that offer comments in opposition to this pecuniary approach. For instance, at page 10 of its comment filing, Smith Bagley opines that mandating a single supported carrier is counterproductive.

ISSUES FOR REFORMING INTERCARRIER COMPENSATION

The Commission had been seeking "the answer" to USF and intercarrier compensation reform for the last 15 years. As the National Association of State Utility Consumer Advocates (NASUCA) stated at page 2, paraphrasing Yogi Berra: "This is déjà vu of déjà vu of déjà vu all over again."

A significant portion of a rural wireline carrier's network cost recovery has been based on intercarrier compensation (ICC). A foundational cornerstone of any reform strategy must include the ability for rural wireline carriers to recover the investments already deployed while maintaining a comparable rate structure as required in Section 254 of the Telecommunications Act of 1996.

The short term proposals offered by the Commission are a mixture of changes to existing rules for intercarrier compensation that attempt to address access arbitrage with potentially drastic changes to current USF rules that could significantly impact the support payments that rural wireline carriers receive.

Several state commissions oppose the proposal of a single rate based on Section 251(b)(5), asserting that this approach would be a substantial encroachment into the jurisdiction of state commissions. For example, the New York Public Service Commission (NYPSC) stated at page 7 that it believes that the Commission should leave intrastate access charge reform to the states.

The Missouri Small Telephone Company Group suggests at pages 6-7 that common sense reform of USF and ICC includes maintaining per-minute charges and continuing rate of return regulation.

A logical first step is to unify interstate and intrastate rates per carrier

GVNW supports the RLEC proposal regarding the unification of Interstate and Intrastate access rates at the discretion of the State Commissions, with support from a Restructure Mechanism (RM). Some issues needing more consideration include the following:

- Carrier of Last Resort (COLR) needs to be evaluated and made consistent with the Commission's USF decisions regarding elimination of support to the highest cost to serve customers. If the Commission determines that certain customers are too costly to serve, the COLR responsibilities need to be adjusted accordingly.

- The RLEC plan definition of Interstate Revenue Requirement needs to be modified to include all of the components of Interstate Revenue Requirement such as Billing and Collection (B&C) and the Interexchange Category. The Commission and ILEC's should recognize that we are transitioning from a system including the billing of interstate toll service for IXC's to a system whereby voice traffic will be an application over the broadband network with no specific toll service to bill. The recovery of all interstate costs need to be addressed so as not to isolate costs which cannot be recovered, subjecting the Commission to confiscation claims.

While GVNW is generally supportive of the RLEC plan, we reserve final judgment until we see the final rules and how those rules impact cost recovery with special attention to the assignment of costs to service that are going away such as:

- Interstate B&C – When toll billing completely goes away, there should not be an assignment of cost to this service.

- When voice service is totally provided as an application[13] over the Internet, there should not be an excessive allocation of cost to the local service.

If the Commission, in partnership with state regulators, were to proceed with any such reductions in intrastate access charges, there must also be created a mechanism that will afford rural wireline carriers the opportunity to replace the lost revenue from the rate equalization. Without this type of revenue offset, rural carriers would be unable to continue the transition to a more ubiquitous broadband network in the highest cost to serve areas of the country, and customers of these carriers face the potential for very significant increases to local rates or SLCs that would not meet the comparable rate standard found in Section 254.

We respectfully submit that in order to meet its responsibility under Section 254 to provide for comparable rates between rural and urban areas, there is indeed an important public policy role for the Commission. The Commission fulfilled this type of

[13] ZipDX indicates that the telephone call "likely has a few more decades of utility." One of GVNW's primary concerns in this reform proceeding is that costs are not isolated in way in which they cannot be recovered. With the transition to a system in which voice will be provided almost exclusively as an application over the Internet, the assignment and recovery of costs to the local service and to the billing and collection service will need to be addressed. In its filing, the Rural Broadband Alliance (RBA) Transitional Stability Plan (TSP) recognized the decline of long distance service on page 10 where it states "*Accordingly, with the continuing relative decline in long distance service, it is necessary to reform the cost recovery mechanisms*." We believe the TSP takes major steps in recognizing the transition and potentially could allow for appropriate recovery. Specifically, the plan accommodates the transition away from the interstate billing and collection service and local service in two ways. First, since the interstate revenue requirement is the current year amount, it includes the interstate billing and collection costs as assigned by the Part 36 and Part 69 rules. We believe the revenues included in paragraph v. on page 15 would need to include interstate billing and collecting revenues. Using these procedures, as the interstate service shifts from the provision of toll billing for IXCs to provision of interstate broadband, the related billing costs will be recovered through the mechanism. Second, under the current rules, as service transitions from local service to an application of voice service over the Internet, the DSL line is re-categorized from a subscriber loop to a "data only" DSL loop (i.e. from category 1.3 which is allocated between state and interstate to a category 1.2 loop which is assigned in total to interstate). This will cause a major shift in cost from state to interstate and from interstate common line to interstate special access. It is not clear under TSP how this shift will be handled for companies that opt to remove their special access costs from the plan.

role when it undertook the challenges that culminated in both the 2001 MAG Order for small carriers and the CALLS Order for larger price cap carriers. It is also appropriate public policy at this juncture to establish a benchmark rate metric that includes the local rate, federal and any state SLCs, and mandatory EAS charges to ensure that arbitrarily low local rate levels are addressed in this reform effort. We support the portion of the RLEC plan that endorses a benchmark starting at $25 that includes the rate components above, and we tentatively support that as an appropriate starting point.

Mandatory Bill and Keep is not the appropriate target

We believe that a mandatory bill-and-keep approach would be detrimental to rural wireline carriers and the customers that they serve. If rural carriers were not permitted to charge other carriers that use their network, it is unlikely that the rates to end-user customers will continue to meet the comparability standard. Providing free access to carriers to a network that has a real cost to maintain does not "send the proper pricing signals." We respectfully suggest that a compensation rate of zero may send improper pricing signals to IXC carriers, wireless carriers and VOIP providers that will lead to increased capacity demands to rural wireline carriers who would then have an inadequate opportunity to recover the economic costs of expanding the network capacity.

One possible outcome of large increases to rates for rural voice and broadband services would be to retard broadband penetration levels in the rural areas of the country. This does not comport with achieving a NATIONAL broadband plan. The Commission itself recognizes this fact as stated at paragraph 80 of the NPRM, where it states in part:

Third, the program must ensure that rates for broadband service are reasonably comparable in all regions of the nation, and rates for voice service are reasonably *comparable in all regions of the nation. Availability of broadband and voice service by itself is not a sufficient goal. We must also make sure that rates are reasonably comparable so that consumers have meaningful access to these services.*

For customers to continue to have comparable and affordable rates in rural areas, the Commission must proceed with great care as it crafts long-term ICC reform. We recognized in our comment filing that as the network transforms to an entirely IP-based platform, usage based access pricing will no longer be viable. We suggested that charging users on a capacity-type basis for access merits serious consideration if the Commission is committed to continuing its long-held approach of providing for an equitable approach for rural carriers. The Public Utilities Commission of Ohio (PUCO) included a transition from a per-minute rate to a capacity-based rate as one of its four key elements of a successful ICC reform plan at page 48 of its comment filing.

The FCC should take actions in 2011 to confirm that current access charges apply to all traffic terminating via carrier facilities on the public switched telecommunications network (PSTN). There should be no exceptions based on regulatory classification or the technology used to originate the calls (e.g., VoIP). We recommend that there be an immediate obligation for VoIP traffic to pay existing ICC rates, in order to put an end to the arbitrage activity related to this type of traffic.

MANDATORY DISAGGREGATION IS NOT THE ANSWER

For a decade, the Commission has provided the option for carriers to compute a geographic disaggregation of federal universal service support on a study area basis. This option was intended to permit eligible carriers to assign support relative to cost to serve, in an attempt to ensure that CETCs would receive a lower level of per-line support if they chose to serve in only the lower-cost portion of a study area.

In our comments, we questioned the efficacy of the Commission proposal as it is presently not obvious what needs mandatory disaggregation would fulfill. With the draconian proposals in the Notice to limit rural carrier recovery of corporate operations expenses, we argued against the concept of increasing this category of expense.

In its comments at pages 3 and 12, the Iowa Utilities Board opposed the disaggregation of high-cost USF support, due to a concern that such a proposal could overwhelm the limited staffing resources of the state commissions.

PAST PERFORMANCE IS RELEVANT IN THE ACCOUNTABILITY DEBATE

<u>Verification of broadband deployment</u>

An important part of a new broadband support fund system will be verification of whether deployments were in fact made. We agree with ADTRAN's comment at page 2 that there must be a process for verifying performance[14] post-deployment.

<u>Non-regulated net income for rural carriers will not "offset" proposed reductions to support mechanisms</u>

There has been some opinion expressed by Commission staff during this reform debate that rural carriers should be able to rely on their nonregulated revenues (we believe net income is the proper metric) to offset reductions in federal universal service payments. A number of our client companies have contacted us, expressing a belief that the provision of individual company data will be important in the advocacy of rational legal and policy arguments that refute opinions similar to the one referenced above.

[14] Some state USF funds have not had adequate performance and accountability measures in place for over a decade. For example, the state of Oregon USF process originally established legislatively for Qwest and Verizon did not require reporting for large carriers. Acquiring companies such as CenturyLink and Frontier must now deal with this situation in the current environment that is more focused to accountability and transparency.

Under the protective Order in place for carriers, we provided data on April 21 from a sample of our client companies that demonstrates that there is not adequate nonregulated income to offset any level of support reductions.

Will the large carrier propensity to avoid rural investment ever change?

In the comment round, we filed data that we had computed from the last available ARMIS data (2007) filed at the Commission for large price cap carriers. Our interpretation of the data is that large price cap carriers have virtually ignored an obligation to invest in their most rural service areas.

A related observation was made by the DC Public Service Commission at pages 5 and 6 of its filing. The DC PSC observed that there are many cases in which the FCC has heard and accepted promises of broadband infrastructure deployment in return for agreeing to a transaction that might not otherwise be in the public interest. The DC PSC suggested that the FCC enforce such commitments. We concur.

We are concerned with the assertion by Frontier that it should not be deprived of the ability to receive support because of its public commitments to broadband deployment made during its acquisition of properties from Verizon. We respectfully suggest that Frontier should be required to meet all of its broadband acquisition commitments as a condition to being able to draw federal universal service support.

The filing from the Blooston Rural Carriers at page iii recommends that "*the Commission needs to study and analyze carefully why small, localized RLECs with minimal financial resources and no access to major capital markets have been able to deploy reasonable broadband services . . .to over 90 percent of their customers in the very highest-cost rural areas, while the much larger and better financially endowed price* *cap carriers have a much poorer record despite their much higher interstate rates of return.*"

As the PUCO noted at page 22 of its comments, based on current market[15] practices, it is clear that the large carriers have no interest in servicing this country's rural customers, particularly those in high-cost markets. The Shoshone-Bannock Tribes noted that large telecommunications providers have no incentive to deliver more than the minimum level of service required.

As the Rural Telecommunications Group notes at page i, the large nationwide carriers routinely ignore the most rural parts of their service areas, choosing to focus solely on cities and the major highways that connect them.

It would be prudent for the Commission to very carefully approach the rural-rural divide issue and not issue blank checks as some states have to large national carriers that have a well-established track record of not deploying rural investment.

REVERSE AUCTIONS ARE NOT THE ANSWER FOR THE RURAL CARRIER PORTION OF THE REFORM EQUATION

The Commission has requested comments on the reverse auction proposals as a part of the initial implementation of the CAF.

[15] As we stated at page 33 in our comments: "Does it make sense, from a prudent public policy perspective, to shift from an opportunity to earn 11.25% and meet customer infrastructure needs to a system in which companies routinely earn over 30% by choosing not to serve rural territory?" We respectfully suggest that that would not be a better system for customers in high-cost to serve areas of rural America. The results are striking – the price cap carriers have had the resources to deploy infrastructure investment to their rural operating territory. Simply stated, the price cap companies made a choice not to invest in rural customers. As the NPRM states at paragraph 598 [FCC 11-13]: "*On the other hand, concerns sometimes are expressed that forms of incentive regulation can lead carriers to reduce costs by reducing investment*." (Footnote omitted).

In our initial comments, we criticized the application of reverse auctions to rural carriers. We suggested that Provider of Last Resort responsibilities are not consistent with reverse auctions and that reverse auctions raise significant public policy issues for high cost to serve areas and should not be implemented initially in these areas. We further asserted that reverse auctions would create an uncertainty with respect to capital recovery and retard the deployment of rural infrastructure. We also expressed concerns that by implementing reverse auctions, the Commission will have fired the starting gun for a race to the bottom in terms of service quality. Other parties agreed that there are potential disadvantages if reverse auctions are applied to rural carriers.

A wide spectrum of parties criticize the reverse auction proposal

Cellular One suggests that there should be an exemption for small businesses from the reverse auction process, and that these providers should continue to receive federal universal service support at current funding levels. Cellular One further suggested that carriers serving low population density areas should be exempt from reverse auctions as well.

Gila River Telecommunications believes that reverse auctions would result in subpar and unacceptable service levels on Tribal lands.

The Indiana Utility Regulatory Commission (IURC) expressed concerns about a reverse auction process, citing a tendency at page 5 for the Commission to employ combinatorial bidding. The IURC is concerned that this could skew the bidding process against smaller RLECs and regional wireless providers in favor of the largest wireless providers.

Public Knowledge and the Benton Foundation express concern about a reverse auction approach, concluding it would likely leave some regions unserved, while simultaneously abandoning the requirement that a USF recipient serve all households in its service territory.

As noted on page i by the Rural Telecommunications Group, the use of reverse auctions to determine high-cost support creates an incentive for anticompetitive behavior by large carriers.

US Cellular placed a concern in the record at pages 21-27 of their comments that a single-winner auction would not comport with the local competition mandates of the 1996 Act.

Respectfully submitted,

Via ECFS at 5/23/11

Jeffry H. Smith
Vice-President and Division Manager, Western Region
Chairman of the Board of Directors
jsmith@gvnw.com